UNITED
NATIONS

A S

General Assembly
Security Council

Distr.
GENERAL

A/50/789
S/1995/998
29 November 1995

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Fiftieth session
Agenda item 112 (c)
HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

SECURITY COUNCIL
Fiftieth year

Letter dated 29 November 1995 from the Permanent Representative of Croatia to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith the comments of the Government of the Republic of Croatia on the report of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia, Ms. Elisabeth Rehn (A/50/727-S/1995/933).

I would be grateful for your kind assistance in circulating this letter and its annex as a document of the General Assembly under agenda item 112 (c), and of the Security Council.

(Signed) Mario NOBILO
Permanent Representative

Annex

Comments of the Government of the Republic of Croatia on the report of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia, Ms. Elisabeth Rehn

1. The Government of the Republic of Croatia has carefully considered the report of the Special Rapporteur on the situation of human rights in the former Yugoslavia, Ms. Elisabeth Rehn. Furthermore, the Government requested that its competent ministries, in compliance with their respective responsibilities, collect information with regard to the above-mentioned report, which have been subsequently included in these comments on the report of the Special Rapporteur.

2. The Republic of Croatia fully supports the Special Rapporteur's intention to establish "working relations and contacts with all authorities concerned" (para. 5). The Croatian Government welcomes the establishment of first contacts with the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serb de facto authorities, which have expressed their readiness to cooperate. Notwithstanding these intentions, it must be reiterated that regional offices of the Commission on Human Rights have been opened only in the Republic of Croatia. The regional office in Croatia has been operating for two years and has collected data without interference, whereas the Federal Republic of Yugoslavia (Serbia and Montenegro) has adamantly rejected the Commission's attempts to establish an office in its territory, the result of which is a vague picture of the state of human rights in the Federal Republic of Yugoslavia (Serbia and Montenegro). Consequently, questions on the very purpose and credibility of integrated reports on the state of human rights in the area of "former Yugoslavia" can be justifiably raised.

3. The Croatian Government hopes that the Special Rapporteur, after establishing working contacts with the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), will also focus her attention on the remaining occupied areas of Croatia (Eastern Slavonia, Baranja and Western Srijern), which are inaccessible to international observers and rapporteurs and where some of the worst crimes against civilians have been committed. 1/ In the liberated areas of Croatia mass graves are being discovered one after another, testifying to the atrocities committed by the Serbian aggressor against the Croatian people. This should also be included in the reports on the violation of human rights.

4. As compared to Bosnia and Herzegovina, where violations to humanitarian law are monitored, and the Federal Republic of Yugoslavia (Serbia and Montenegro), where only individual aspects of human rights violations are monitored because direct information cannot be obtained, the ambiguity of the Special Rapporteur's mandate leads to a situation where virtually anything can be classified as human rights when considering Croatia.

5. Furthermore, while on the one hand the Special Rapporteur's report on Croatia is based on data and reports collected from various sources, including information that has yet to be verified, on the other hand the report on the

Federal Republic of Yugoslavia (Serbia and Montenegro) is based on answers given by the officials of the Federal Republic of Yugoslavia (Serbia and Montenegro) in which they repudiate any allegations of human rights violations and are quoted in the report as evidence. For example, in her report, the Special Rapporteur reviews the position of minorities in the Federal Republic of Yugoslavia (Serbia and Montenegro) and quotes the Federal Republic of Yugoslavia (Serbia and Montenegro) Government's responses that the Secretariat for National Minorities has not received any request by any national minority member for protection against forcible emigration (para. 97) since the Federal Republic of Yugoslavia (Serbia and Montenegro) does not recognize the minority status of the Croatian minority.

6. The Special Rapporteur's report on Croatia is focused on the areas liberated during and following operation "Storm". The Special Rapporteur was assisted by the Croatian Government in her one-day tour of the area. Earlier, during the occupation, there were no visits nor were there any special reports filed on the human rights situation in the occupied areas, even though more than 600 civilians were killed by Serb paramilitaries in this nominally United Nations Protection Force (UNPROFOR)-controlled area.

7. The Special Rapporteur does not mention anywhere in her report that Croatia undertook military action to liberate its occupied territories, a fact clearly recognized in General Assembly resolution 49/43 of 9 December 1994, entitled "The situation in the occupied territories of Croatia".

8. Croatia's military action was based on the international law on the right to self-defence (Article 51 of the Charter of the United Nations and the Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II of 8 June 1977)) and was conducted exclusively within sovereign Croatian territory. Article 3 (1) of the Additional Protocol states that "nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State". During operation "Storm", Croatian military and police forces were under strict orders to comply fully with international humanitarian law in conformity with the provisions of the Additional Protocol.

9. Croatia's search for a peaceful solution to its occupied territories was repeatedly demonstrated by its willingness to exercise maximum restraint during the four years of fruitless negotiations with the rebel Croatian Serbs. It was only when it became obvious that no peaceful solution was possible because of the continued intransigence of the rebel Serb leadership that Croatia proceeded with a military solution, an option that is available to any sovereign United Nations Member State. Moreover, a decisive factor in undertaking the military option to liberate the occupied territories of Croatia was also to break the Serbian siege of the United Nations safe area of Bihać and to open humanitarian relief routes needed for the starving population there. Some leading representatives of the international community pointed out on more than one occasion that it was operation "Storm" that changed the strategic balance in the former Yugoslavia and paved the way for the negotiated peaceful reintegration of

the remaining occupied areas of Croatia and a peaceful settlement to the conflict in Bosnia.

10. The Special Rapporteur says in her report that, in operation "Storm", civilians were deliberately targeted by the Croatian Army (para. 15), which is an entirely arbitrary and in no way proven qualification, because the liberating operation was carried out with the minimum number of victims and minimum destruction. A similar qualification is repeated in paragraph 105, where it is said that the action involved serious violations of human rights and humanitarian law. Croatia considers that no serious violations of humanitarian law occurred during operation "Storm". The number of persons killed during the operation, given in paragraph 22, clearly suggests that the operation was performed with a high degree of professionalism and with minimum possible casualties among military and civilian personnel. The correctness of this evaluation can be exemplified if compared with Croatia's casualties during the Serbian armed aggression and occupation (12,846 persons killed and missing, 32,626 wounded).

11. Because of the ongoing war operations of operation "Storm" and shortly after its completion, access to the liberated areas was not possible for several days in view of the risk of mines and stranded and isolated Serb paramilitary groups. Following the liberation of the occupied areas in operation "Storm", the Croatian Government concluded an agreement with UNCRO (the agreement between the Government of the Republic of Croatia and the United Nations Peace Force (UNCRO) on temporary measures in the areas formerly known as "Sector North" and "Sector South") on 6 August 1995, providing for the monitoring of human rights by UNCRO, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC). Under the said agreement the Croatian Government undertook to allow the local population - the bulk of which left the area following Martić's order to this effect - to stay, to leave or to return.

12. It is especially important to highlight the difference between the compulsory expulsions of non-Serbs - which has continued unabated for four years in all Serb-controlled parts of the former Yugoslavia - and the departure of the mostly Serbian populace from former Sectors North and South of the Republic of Croatia. The Serbian population in the liberated areas would not and in many cases still refuses to recognize the sovereignty of the Republic of Croatia, while many of them took part in the armed rebellion against it. The Serb population abandoned this area at the direct orders of the local rebel leadership or of their own free will, in spite of calls by Croatian authorities to stay. In a show of goodwill, Croatian police and other responsible authorities also allowed a number of Serbian paramilitary troops to leave, although they had taken an active part in the rebellion against Croatia. Their departure was guarded by the police and, except for some incidents, they left safely without endangering the civilian population. In all known cases of attacks on refugee columns, which did not have any grave consequences, the police detained the perpetrators and initiated appropriate proceedings against them.

13. Soon after the liberation of the occupied territories, the Croatian Government allowed many international organizations to visit the areas. It also

opened the way and encouraged displaced persons and refugees to return to their homes. The liberated areas were inspected by the European Community Monitoring Mission and visited by an Organization for Security and Cooperation in Europe (OSCE) fact-finding mission and a series of non-governmental organizations (NGOs). Being aware of the fact that the rule of law and the protection of human rights could not be restored in a matter of days in an area previously completely closed to the Croatian authorities, the Croatian Government reached an agreement with UNCRO, allowing broad access to international humanitarian organizations in these areas. The violations of human rights committed by individuals or groups that took place after operation "Storm" and prior to the complete restoration of Croatian authority illustrate the complexity of the problems involved in the establishment of civil authority. Hence the agreement with UNCRO was fully justified.

14. Immediately following operation "Storm", Croatian police entered the liberated areas, where they proceeded to secure public order and peace as well as creating security for the normalization of life and the return of the displaced population. The police were specially instructed to protect all citizens, those who had remained and those who returned, and their property. It was under these circumstances, following the military and police operation, that a certain number of human rights violations were recorded (criminal behaviour, which included murder, arson and the pillaging of abandoned houses). The Government of the Republic of Croatia would like to express its regret that human rights violations were perpetrated by individuals or groups beyond its control, and these acts have been publicly condemned by its highest officials. The competent authorities are taking legal action against the perpetrators of these acts, who will be prosecuted to the full extent of the law. To this effect, the following legal measures have been recorded:

(a) Criminal proceedings have been instituted against 90 persons in view of the reasonable suspicion that they have perpetrated criminal acts. Criminal investigations have hitherto solved 15 murder cases - 4 multiple and 11 individual murders, totalling 31 victims. Twenty persons have had charges brought against them before the judicial authorities. Of those charged and apprehended, three are members of the Croatian Army, one is a policeman and the rest are civilians. Most of the civilians misused Croatian Army uniforms in perpetrating criminal acts. The proceedings instituted clearly point to the established rule of law and punishment of crimes perpetrated by individuals;

(b) Those persons suspected for the murder of nine Serbs in Varivode on 28 September 1995 were brought into custody under the jurisdiction of the Investigation Centre of the County Court in Zadar on 18 October 1995, and charges have been instituted against them;

(c) Those persons suspected for the murder of seven Serbs in Gošic on 27 August 1995 were brought into custody under the jurisdiction of the County Court in Zadar on 17 October 1995, and charges have been instituted against them;

(d) Charges have been instituted against the suspected perpetrators of the murders of two Moslems in Kuplensko on 21 September 1995;

(e) Police solved a double murder case in Strmica (Dronjci) on 7 September 1995;

(f) Croatian police discovered 11 individual murders in Kolarina, Bribirske, Mostine, Jošani, Cakici, Zrmanja, Ocestovo, Tišma, Stupno, Mošcenica and Bobovac. Investigations to uncover the perpetrators to these crimes are under way.

15. The treatment of prisoners taken by Croatian Army and police forces during and after operation "Storm" was in conformity with the Geneva Conventions and international humanitarian law. As early as 8 August 1995, the Committee for Imprisoned and Missing Persons gave ICRC access to detention centres and custodial facilities so as to facilitate the registration and interviewing of persons held there and to carry messages to their families. ICRC has been able to visit these persons on a continual basis, and has verified that their treatment is in conformity with established standards.

16. The Republic of Croatia has started to allow the return of persons who meet the legal requirements to do so. Certain administrative requirements have been introduced owing to the fact that for four years many individuals in the occupied territories adhered to the authorities who actively opposed the Republic of Croatia and many of them were even members of paramilitary groups. Moreover, it also has to be taken into consideration that since 1991 more than 200,000 Croats have been forced out of the Federal Republic of Yugoslavia (Serbia and Montenegro) or territory under Bosnian-Serb control, especially from the Banja Luka area, where the persecution still persists. According to the 1991 census, of the 180,593 Croats and 355,956 Moslems in the Banja Luka area only some 30,000 Croats and 37,000 Moslems remained in 1994. At present, only a few thousand Croats and Moslems remain in this area. Their fate remains unknown. For these reasons, the issue of the return of displaced persons and refugees in Croatia needs to be included in the general solution of relations between the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro). The Act on Temporary Measures on the Administration and Supervision of Property should be regarded in this light, for it seeks to protect and use abandoned property without prejudice to ownership rights. As for the return of Moslem refugees to Bosnia and Herzegovina, their gradual return to areas considered safe has been agreed to between the Governments of Croatia and Bosnia.

17. It must be reiterated that, during the aggression and occupation of its territory, infrastructure in the Republic of Croatia was seriously affected. It has been estimated that 260,000 housing units were damaged or destroyed, while 1,870 kilometres of roads and 40 per cent of industrial facilities suffered a similar fate. During operation "Storm", the Special Rapporteur estimates that a further 5,000 houses and apartments were also damaged or destroyed. Given the area in question (12,000 square kilometres) and the intensity and speed at which operation "Storm" was carried out, although this damage cannot be labelled as massive, it must be regarded as serious. From the beginning of the operation to 31 October 1995, 2,787 fires (mostly in housing units and apartment houses) were recorded. While criminal investigators are still trying to establish the exact cause of the fires and whether they relate to war operations or not, it has hitherto been established that 2,072 houses caught fire as a consequence of war

operations and 715 were partly or totally destroyed by having been intentionally set on fire. The Republic of Croatia has reacted by legally protecting the property in the region and, as a result of criminal investigations, 11 persons have been apprehended and brought up on charges.

18. Also, it must be stated that 1,054 criminal acts of grand theft have been recorded in the liberated territories, the majority of which can be attributed to objects being taken from abandoned houses. Criminal investigations have solved 770 of these criminal acts, and 1,260 perpetrators have been brought up on charges before the judicial authorities. In this regard, some data from the Special Rapporteur's report are impossible to verify because they are incomplete and vague.

19. The Ministry of Labour and Social Welfare has developed a programme for the care of the elderly who have remained in the liberated areas, including measures of protection. This programme encompasses more than 1,500 elderly persons.

20. The Republic of Croatia, by notifying its succession on 8 October 1992, became a party to all the United Nations human rights treaties to which the Socialist Federal Republic of Yugoslavia had been a party. 2/ Under these United Nations human rights treaties, which contain the obligation to report on their implementation, Croatia has hitherto submitted reports to the Convention on the Elimination of Racial Discrimination (initial and additional), the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women (initial and specific (related to the suffering of women in times of war)), as well as a special report under the International Covenant on Civil and Political Rights.

21. The Republic of Croatia believes that double reporting to United Nations agencies is unnecessary, and that the mandate of the Special Rapporteur should be limited to violations of humanitarian law and human rights that are related to armed conflict. Transition and democratization issues - which are similar in all countries of Central and Eastern Europe and contain human rights issues that are being monitored by contractual bodies established under United Nations human rights treaties and regional treaties between respective States parties should be separated from the specific mandate of the Special Rapporteur.

22. The Special Rapporteur states that she intends to devote special attention to the rights of children and violations of the Convention on the Rights of the Child. From the beginning of the war in 1991 to May 1995, 263 children were killed and 1,004 were wounded in the Republic of Croatia. The diminishing intensity of the conflict has not eliminated the dangers for children, because, among other things, it has been assessed that some 3 million land-mines are still scattered throughout the republic. The Republic of Croatia submitted its initial report under the Convention on the Rights of the Child to the Committee for the Rights of the Child, which is presently being taken under consideration.

23. The Republic of Croatia, after attaining its independence, ratified the Optional Protocol to the International Covenant on Civil and Political Rights and recognized the competence of the Human Rights Committee under article 41 of the International Covenant on Civil and Political Rights, and ratified the Second Optional Protocol to the International Covenant on Civil and Political

Rights aiming at the abolition of the death penalty. 3/ Precisely by ratifying the Optional Protocol to the International Covenant on Civil and Political Rights, the Republic of Croatia committed itself to stricter international supervision, to which both the Socialist Federal Republic of Yugoslavia and the Federal Republic of Yugoslavia (Serbia and Montenegro) are not a party. Through these ratifications, the Republic of Croatia has given its citizens the right to submit written communications for consideration of claims on the tenor of their rights guaranteed in the Covenant to the Human Rights Committee, clearly indicating its orientation with regard to the protection of human rights.

24. As for national minorities in the Republic of Croatia, notwithstanding the suspension of some provisions of the Constitutional Act on Human Rights, minority rights are protected by the Constitution of the Republic of Croatia, which contains the following articles:

> "Article 14: Citizens of the Republic of Croatia shall have all rights and freedoms, irrespective of their race, colour, sex, language, religion, political or other conviction, national or social origin ...;
>
> "Article 15: In the Republic of Croatia members of all peoples and minorities shall be equal. Members of all peoples and minorities are guaranteed the freedom of expressing their ethnic identity, free use of their language and script, and cultural autonomy;".

25. Minority rights are also protected under the International Covenant on Civil and Political Rights, which provides for collective rights relating to minorities and their right to cultural freedoms, freedom of religion and freedom to use their own language (art. 27). Under the Constitution of the Republic of Croatia, treaties to which the Republic of Croatia is party are directly applied and are above domestic law (art. 134 of the Constitution). The Republic of Croatia has expressed its readiness to accede to the Council of Europe's Framework Convention on the Protection of Minorities, and steps are being taken by the Council of Europe in this direction to have the Republic of Croatia accede to that Convention.

26. Concerning the establishment of a provisional human rights court, the Government of the Republic of Croatia issued a decision to initiate the procedure for its establishment and the Ministry of Justice has established a working group to consider the legal issues related to the establishment of this Court. Although the Court has yet to be instituted, the working group has called on the Council of Europe to render professional legal assistance and expertise in connection with the possible implementation of Council of Europe resolution 93/6 on the mechanism for the supervision of human rights in States not members of the Council of Europe. The Republic of Croatia, by introducing the institution of the constitutional complaint into its legal system, has provided protection for individuals in the Constitutional Court, and therefore the temporary suspension of the Constitutional Act on Human Rights does not jeopardize the judicial protection of human rights.

27. In closing, the Republic of Croatia looks forward to a time when distinctions will be made between the aggressor and the victim; between occupation and liberation, between massive systematic violations of

international humanitarian law and human rights from individuals acts and acts of groups, and between forceful expulsion known as "ethnic cleansing" - a term personified by the heinous actions of Serb paramilitaries and regular troops throughout the former Yugoslavia - as compared to "voluntary departures". The Republic of Croatia will continue the process of establishing a sovereign democratic State governed by the rule of law and the full respect of human rights and fundamental freedoms.

Notes

1/ Four years after the destruction of Vukovar, the International Tribunal for War Crimes has brought three former senior Yugoslav People's Army officers, now in the service of the military forces of the Federal Republic of Yugoslavia (Serbia and Montenegro), up on charges. The three officers, Šljivančanin, Mrkšić and Radić, have been indicted with war crimes committed during the occupation of Vukovar.

2/ Narodne Novine - Medunarodni ugovori br. 12/93, of 15 October 1993.

3/ The Parliament of the Republic of Croatia adopted the Act on the ratification of the Optional Protocol to the International Covenant on Civil and Political Rights of 16 December 1966; the Act on the ratification of article 41 of the International Covenant on Civil and Political Rights of 16 December 1966; the Act on the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights of 15 December 1989, aiming at the abolition of the death penalty; and the President of the Republic issued decisions on their proclamation under article 89 of the Constitution of the Republic of Croatia. Narodne Novine - Medunarodni ugovori br. 7/1995. The instrument for accession to the Protocols was signed on 4 October 1995 by the Minister for Foreign Affairs of the Republic of Croatia.